Enhanced Use Leasing

DASA(I&H)

DPW Workshop

December 2003

Enhanced Use Leasing

“My vision is to create sustainable installations that support missions of the transformed Army with land, buildings and infrastructure providing excellent quality of life support for soldiers and their families.”

“To that end, the Enhanced Use Leasing authority is a major tool to provide the necessary resources to sustain Army installations.”

Mr. Joseph W. Whitaker
Deputy Assistant Secretary of the Army
(Installations and Housing)

Title 10 U.S.C. Section 2667

Military Leasing authority was revised or "Enhanced" in Pub. L. 106-398, National Defense Authorization Act for FY 2001

- **Rent can be used on any Army property – not just leased area**
- **Increased flexibility of what can be collected as "In-Kind"**
- **Added additional uses of cash rent**

Title 10 U.S.C. Section 2667

- **Property must <u>not</u> be excess**
  - Determined Available
- **Lease must promote the national defense or be in the public interest**
- **Rent must be no less than Fair Market Value – in cash or in-kind**
  - for the leased interest
  - takes into account restrictions on use

Title 10 U.S.C. Section 2667

- **Rent – In-kind can be:**
  - **Maintenance, protection, alteration, repair, improvement, or restoration (including environmental restoration) of property or facilities**
  - **Construction of new facilities**
  - **Provision of facilities**
  - **Facilities operation support**
  - **Provision of other services relating to lease activities**

Title 10 U.S.C. Section 2667

- **Rent – Cash can be used for:**
  - **Maintenance, protection, alteration, repair, improvement,or restoration (including environmental restoration) of property or facilities.**
  - **Construction or acquisition of new facilities.**
  - **In-Lease of facilities.**
  - **Facilities operation support.**
- **Deposited into a special account**
  - **Has to be appropriated**

Enhanced Use Leasing Is?

- **Leasing under the “enhanced” 10 USC 2667**
- **Lease as a tool to provide mission, interim, and support facilities through more businesslike relationship with lessee**
  - **Factors are length of lease term, scope and scale of development**
- **Lease can be to**
  - ***State, local, & political agencies or***
  - ***Private organizations & individuals***
- ***There can be Federal tenants, but inleasing must be independently authorized and have an OMB scoring analysis***

Scoring – New Rule

Revised OMB Cir A-11, Appendix B, Pg 7:

http://www1.whitehouse.gov/OMB/circulars/a011/a011.html

"If the government ground-leases property to a non-Federal party and subsequently leases back the improvements, the lease will not be considered a lease-back from a public/private partnership, as long as the lessor is a totally non-Federal entity. Such lease-backs may be treated as operating leases if the meet the criteria for an operating lease."

OMB Budget Scoring Considerations

Impact of OMB Budget Scoring Decisions on EULs

Ground Lease:	
Allowable	Not Allowable
• **Can provide real property/ assets to developer (term can be 50 years)**	☒ **Cannot link ground lease to federal leaseback of space (no discounted leaseback)**
• **Must transfer ownership risks and costs to developer**	☒ **Cannot provide federal guarantee of financing of developer**
• **Ground lease "in-kind rent" can include provision of services or office space**	☒ **Variable/contingent rent on ground lease could trigger capital lease on lease back**
Federal Lease of Space:	
• **Space must be secured through competition under "operating lease" guidelines**	☒ **Cannot have link between decision-making on space lease and contingent ground lease rent**

Operating Leases

- **Present value of lease payments does not exceed 90 percent of the fair market value of the asset.**
- **The lease term not greater than 75 percent of the economic life of the asset.**
  - **[Experience shows lease term of 15-17 years works; anything longer does not.]**
- **No bargain-price purchase option.**
- **Ownership of asset remains with lessor and is not transferred to the Government.**
- **Asset is a general purpose asset, not built for special purpose of the Government**
- **There is a private sector market for the asset.**

GSA Scoring Model

- **The GSA Scoring Model is used to determine if a proposed lease satisfies the “90% criterion” for an Operating Lease**
- **All of the other criterion must also be met to satisfy the “Operating Lease” requirements**

GSA Scoring Model

- **Information for GSA Scoring Model.**
  - ✓ Name and Length of Lease
  - ✓ Renewal Options? Termination Fees?* (see following page)
  - ✓ Rentable Square Feet (RSF) to Be Leased
  - ✓ Fiscal Year of Lease Award and Occupancy
  - ✓ Maintenance & Repair Percentage (% of Annual Rent)
  - ✓ Full service rate for rentable square foot
  - ✓ Operating expenses cost per square foot
  - ✓ Real Estate Taxes and Insurance Cost per Sq. Ft.
  - ✓ Lessor Management Costs per Sq. Ft. (BOMA)
  - ✓ Discount Rate (supplied by OMB Circular A-94, updated annually)
  - ✓ Inflation Rate (supplied by GSA)
  - ✓ Fair Market Value (FMV) of Rentable Sq. Ft. at occupancy date* (see following pages)
- **OMB must approve prior to**

Enhanced Use Leasing Is Not?

- **Term is not used to cover standard leases:**
  - *Agricultural and Grazing*
  - *Schools*
  - *Banks and Credit Unions*
  - *Short-term interim uses within delegated authority of the IMA*
- **Changes in law can be used for all 2667 leases**

Why Lease?

- Promote multiple use of lands to meet legal and stewardship responsibilities
- Reduce maintenance and custody costs
- Promote the National Defense, Public Interest, Installation Mission
- Insure future availability for defined mission
- Leverage assets to meet Installation and Army requirements and bridge gap between available funding and fiscal requirements

Outline of Process

- Requirements - determined by installation
  - Identify problem or need
  - Could the private sector be a solution?
  - What real estate assets are available?
- Availability
  - Installation prepares Report of Availability –
    - checklist showing restrictions, common issues, restrictions, proposed use
    - concept approval does not require all items to be filled in
  - Determination of Availability
    - by DASA(I&H) or IMA
    - AR 405-80 sets out delegations
  - 10 U.S.C. 2662 and 2667 report to Congress for values over $500,000

Outline of Process

- Notice of Availability to Lease (NOL) and Application format – Corps District
  - Two Step process:
    - 1st Application focuses on qualifications
    - 2nd Selected Developer and Army develop leasing plan after conditional selection
    - Compared to regular One Step where application covers qualifications, leasing plan and consideration
  - Advertise depending on scope of project
- Evaluate Applications and select Lessee – Corps and Installation team
  - Analyze economics of the proposal
  - Qualifications of applicant a key criteria

Outline of Process

- Develop Business and Leasing Plan – Developer and Corps/Installation team
- Finalize & close
  - Execute Lease – District Chief of Real Estate
- Manage compliance throughout term
  - Installation manages day to day operations
    - Separate agreements on utilities and support issues
  - Corps manages compliance with lease document on behalf of Secretary
    - Non-compliance may trigger litigation or legal action
- Must be a exit strategy built in

Project Considerations

- **Be specific as to available facilities**
  - Don’t worry if some drop out and some are added
- **Be specific as to any prohibited uses**
  - Let private sector have room to be innovative
  - this is not a construction contract – we do not have to have all the answers
- **Goals should be realistic with economic potential**
- **Force Protection must be a major consideration**
  - Broader market if minimally impacted by Force Protection requirements
  - Consider types of tenants
  - Limited access and security can be a marketing feature
- **Return to Army**
  - current Fair Market Value may be a negative value due to condition
  - Applications must be analyzed to consider final use

Questions?